

### **Regulation on Grievances Filed Pursuant to Section 607 of *The Code***

I. Purpose of the Grievance Procedure. Section 607 of *The Code* provides a process for faculty members to seek redress concerning employment related decisions made by an administrator in a supervisory role over the faculty member which directly relate to a faculty member's terms and condition of employment.

#### II. Initiation of the Grievance Process

A. Any faculty member may file a grievance (as defined in Section 607 of *The Code*) in accordance with the grievance procedures established by the constituent institution. The grievance shall be in writing and shall set forth in detail the nature of the grievance and the administrator in the supervisory role over the faculty member against whom the grievance is being filed. The faculty member shall deliver a copy of the grievance to the faculty grievance committee by a method that provides proof of delivery. The faculty grievance committee will provide a copy to the respondent administrator.

B. The faculty grievance committee should first refer the grievance for mediation in accordance with the procedures of the constituent institution, if applicable.

C. The constituent institution may appoint, assign, or otherwise provide administrative support to the grievance committee.

#### III. Mediation of Grievances

A. Mediation is a procedure in which the disputing parties enlist the assistance of a neutral party to help them in achieving a voluntary, bilateral agreement that finally and definitively resolves all or portions of the grievance, without having to convene the grievance committee. Any such mediated agreement between the parties shall be reduced to a written resolution agreement.

B. The appropriate functions of a mediator are to assist the parties in defining, clarifying, communicating about, and ascertaining the substantiality and relevance of the issues that appear to divide the parties and to aid the parties in generating, considering, and communicating with each other about possible bases for resolving the dispute.

C. Each constituent institution will have a policy either that requires the parties to a grievance made under Section 607 of *The Code* to participate in mediation as a prerequisite to access to the formal faculty grievance process or that permits the parties voluntarily to do so. While there can be no requirement that forces a party to reach a mediated resolution agreement, a constituent institution may have a procedure that requires the parties to participate in a mediation process about the dispute.

D. Each constituent institution will have a mediation program or process which:

1. Has available the number of campus mediators necessary based on the size of the campus and the estimated need. Mediators may be trained members of the faculty or staff, outside mediators from the community, or mediators from other campuses within the University. Mediators may not be members of the faculty committee that hears Section 607 grievances.
2. Requires every mediator to have successfully completed formal mediation training substantially equivalent to that required for certification by the North Carolina Administrative Office of the Courts or to have been formally trained in mediation specifically designed for use in a university setting.
3. Has a process, when needed, for arranging the mediation, and communicating those arrangements to the parties.
4. Determines under what circumstances, if any, attorneys will be allowed to participate in the mediation process.
5. Assures the parties that a decision by either party not to pursue mediation beyond the campus required minimum will not be held against that party in any way and that no fault will attach to either party if mediation does not produce a settlement.
6. Provides that no record of a failed mediation process will be produced by the mediator other than an unelaborated written statement to the appropriate authority necessary to invoke the next step in the grievance process, i.e., that mediation was attempted but a resolution was not reached.
7. Prohibits the mediator from being called as a witness in any subsequent proceeding and prohibits anything done or said by either party during a mediation process from being referred to or used against a party in any subsequent proceeding.

E. The mediation policy of each constituent institution must provide that any mediation agreement that obligates the university must be signed by a university official with the authority to bind the university concerning the particular agreement.

F. Any time limit adopted by a constituent institution or by this regulation concerning the formal resolution of Section 607 grievances will be suspended for the duration of a mediation process being held pursuant to this regulation.

#### IV. Administrative Decision

A. Training. Because grievances can present complex and difficult questions of fact, policy, and law, and because of the central role of the faculty committee hearing in gathering and preserving the evidence upon which decisions related to the matter will be based, chancellors, in consultation with campus counsel, should ensure that faculty committee

members have access to appropriate training materials and that relevant administrators and aggrieved faculty members have access to information regarding the process.

B. The faculty grievance committee shall only hear grievances that meet the requirements of Section 607(3) of *The Code*. A grievance must be based upon a decision of an administrator in a supervisory role over the faculty member. The decision must: (i) constitute a violation of federal or state law, UNC Code or Policy, or constituent institution policy, and (ii) demonstrate that the faculty member was negatively affected by the decision. Notwithstanding the foregoing, a grievance shall not include a matter that is subject to the jurisdiction of another standing committee of the faculty, or subject to another institutional process as may be required under applicable law (i.e., Title IX proceedings, research misconduct investigations, equal employment office, etc.). For clarity, a grievance shall not include disputes between faculty colleagues, disputes between faculty and staff members, disputes between faculty and students, decisions that do not directly affect the faculty member's terms and conditions of employment, decisions on teaching loads and assignments, or business decisions about the allocation of university resources other than the faculty member's compensation.

C. If the grievance is not resolved through the mediation process, then the matter will be reviewed by the faculty grievance committee established pursuant to Section 607 of *The Code*. First, the faculty grievance committee must decide whether the faculty member has alleged facts that, if true, constitute the basis for a grievance. If the faculty member fails to establish that the underlying issue(s) constitute a grievance under Section 607 of *The Code*, the faculty grievance committee must dismiss the grievance. Notice of dismissal shall be provided, in writing, to the faculty member, the respondent administrator, and the chancellor.

D. The faculty member must allege facts that, if true, constitute the basis for a grievance. The grievance committee may delegate this initial determination to the chair of the faculty grievance committee, or another trained member of the faculty. If the faculty member has alleged facts that, if true, constitute the basis for a grievance, the grievance committee will hold a hearing, meeting, or series of meetings to collect and review the relevant information and facts. The faculty member and the respondent administrator shall be invited to participate in the process. The faculty member shall have the opportunity to present evidence in support of the grievance and the respondent administrator shall have the opportunity to respond. The faculty grievance committee is to maintain a complete transcript of the proceedings and a record of the evidence received. Only the evidence presented and accepted into the record by the faculty grievance committee shall be considered by the faculty grievance committee. After receiving the evidence, the faculty grievance committee will make a recommendation to the chancellor. The burden of proof is on the faculty member to establish by a preponderance of the evidence the allegations in the grievance and that the faculty member is entitled to relief.<sup>1</sup>

E. After receiving the evidence, the faculty grievance committee shall prepare a written report of its findings, which shall be provided to the faculty member, the respondent

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<sup>1</sup> The burden of proof for grievances of non-disciplinary separation under Section 602(6)(d) of *The Code* shall be on the university to show by a preponderance of evidence that the faculty member was unavailable based on the grounds in subsection (d) and that the university took reasonable steps to avoid separation.

administrator, and the chancellor. The written report shall indicate whether the party with the burden of proof has met its burden, and what, if any, relief is recommended.

F. The chancellor shall decide whether to accept, reject, or modify the faculty grievance committee's finding and recommendation. The chancellor shall base their decision on the record. The chancellor may, in their discretion, consult with the faculty grievance committee before making the decision. The decision of the chancellor is the final administrative decision.

G. The chancellor shall notify the faculty member and the respondent administrator, in writing, of the chancellor's decision. The notification to the parties shall include a notice of any available appeal rights and the timeline for any available appeal.

H. The grievance process is available to actively employed members of the faculty of a constituent institution. A faculty member whose employment ends during the pendency of a grievance proceeding is not entitled to continue the grievance. However, the chancellor may, in their sole discretion, determine that it is in the best interest of the constituent institution to continue the grievance.

## V. Appeals

A. Decisions which may be appealed to the Board of Trustees.

1. A decision in favor of the faculty member may not be appealed.

2. A decision not in favor of the faculty member may be appealed to the board of trustees of the constituent institution. The decision of the board of trustees is final and may not be further appealed.

3. The board of trustees may delegate to a designated committee of the board of trustees the authority to review appeals and make final decisions of appeals under Section 607 of *The Code*.

B. Timeline for Appeals. A faculty member who seeks to appeal the chancellor's decision must file written notice of appeal with the board of trustees (through the chancellor with proof of delivery) within 14 calendar days after the chancellor delivers his or her decision. The notice shall contain a brief statement of the basis for the appeal. The constituent institution will establish a schedule for the submission of relevant documents to be presented with the appeal. The board of trustees shall establish a schedule for reviewing appeals and will endeavor to review appeals and issue its decisions as expeditiously as practicable. The board of trustees may, in its sole discretion, waive or extend the 14-calendar day timeline for a faculty member to file written notice of appeal. The timeline for appeal under this section shall be contained in the constituent institution's grievance procedures, faculty handbook, or policy manual.

C. Standard for Review. In order for the board of trustees to reverse or modify the chancellor's decision, the faculty member must demonstrate that the chancellor's decision was clearly erroneous, that the chancellor's decision violated federal or state law or UNC Code

or Policy or constituent institution policy, or that the process used in deciding the grievance was materially flawed.

VI. Other Matters

A. Effective Date. The requirements of this regulation shall be effective as of the date adopted.

B. Relation to Federal and State Laws. The foregoing regulation is meant to supplement, and does not purport to supplant or modify, those statutory enactments which may govern or relate to the subject matter of this regulation.